



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/173587

PRELIMINARY RECITALS

Pursuant to a petition filed April 11, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on April 28, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner was overpaid FoodShare of \$335.00.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services (Department)
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner received FoodShare from at least February through March 2011.
3. In February 2016, the Department issued an *Administrative Disqualification Hearing Notice* to the petitioner, advising that a FoodShare intentional program violation hearing was scheduled for her on March 21, 2016. The March 21, 2016 hearing was conducted by Administrative Law Judge Gagnon of this office, and the petitioner did not appear.

4. On March 31, 2016, Judge Gagnon issued a decision that sustained the Department's position that the petitioner above had engaged in FS trafficking, and that she should be disqualified from the FS program for one year. Wisconsin Division of Hearings and Appeals decision No. FOF/171195. Petitioner (respondent in the IPV case) did file a rehearing request but that was denied.
5. On April 4, 2016, the Department issued written notice to the petitioner advising that she had been overpaid by \$335.00, which is the amount of FS that she allegedly trafficked.
6. The \$335.00 overpayment amount is the total of two suspicious transactions that occurred on February 14, 2011 (\$135.00) and March 10, 2011 (\$200.00). The transactions occurred at [REDACTED] [REDACTED] ([REDACTED]), [REDACTED], a mobile vendor who had no food but traded FoodShare benefits for cash. The owner of [REDACTED] was convicted in Federal of unlawfully purchasing and redeeming FoodShare benefits.

DISCUSSION

The Department is required to make an Intentional Program Violation (IPV) determination for a recipient's behavior if it includes:

1. Making false or misleading statements or misrepresenting, concealing or withholding facts to become eligible or to remain eligible for benefits, or
2. Committing any act that constitutes a violation of FoodShare regulations or state statutes relating to the use, presentation, transfer, acquisition, receipt or possession of FS, i.e., trafficking FS.

See, FoodShare Wisconsin Handbook (FSWH), § 7.3.2.4.

If the Department believes that an IPV has been committed, it schedules an IPV hearing before a state Administrative Law Judge. That was done here. Following that hearing, the Administrative Law Judge issues a decision that either sustains or reverses the recommended IPV sanction. In this case, the Judge sustained the sanction, which allows the sanction to go forward.

This hearing has to do with the Department's determination that it can recover the \$335.00 in benefits that the petitioner trafficked in February and March 2011. The Department met its burden of establishing, by a preponderance of the credible evidence, that the value of the FS trafficked by the petitioner was \$335.00. The federal rule requires of the Department that "all intentional program violation claims must be established and collected in accordance with the procedures set forth in § 273.18 [the overpayment collection rule]." Thus, I conclude that the Department may proceed with collection efforts for the \$335.00.

CONCLUSIONS OF LAW

That the Department may proceed with collection efforts for the \$335.00 trafficked by the petitioner in 2011.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of June, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 8, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability